

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

Case No. 21-CV723

2021 AUG -2 PM 11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MIGUEL VINCHER,
Petitioner,

v.

STATE OF NEW MEXICO; DWAYNE
SANTISTEVAN, Warden, Lea County
Correctional Facility, Respondents,

Following the denial by the New Mexico
Supreme Court appeal in New Mexico
State Case No. D-503-CR-2016-000-
66.

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254

[EVIDENTIARY HEARING REQUESTED]

Miguel Vincher
SELF

6500 W. Miller Dr.
Hobbs, NM 88249

80710412

CLAIMS

T. Trill counsel was ineffective due to the state-district court's ruling and his own failure to call Natalie at trial, impeach Mark with prior inconsistent testimony from the preliminary hearings, and objecting to prejudicial delayed disclosure testimony by Detective Naylor.

FACTS RELEVANT TO THE CLAIM

First and foremost, as a procedural matter, Petitioner submitted a request to the Lee County Correctional for his financial statement history for the preceding six (6) months. This request was submitted on July 16, 2021. Contrary to WCCD policy, LCCF did not respond to the request within the 7-day time constraint. On July 28, 2021, Petitioner submitted an informal complaint to grievance this issue and will exhaust his administrative remedies. Petitioner is not at fault for this and believes that, if necessary,

this Court should order Respondents to provide him with this financial statement in order for him to properly file in forma pauperis.

NATURE OF THE CASE

Miguel Vimernez was charged with Criminal Sexual Contact of a Minor based on allegations that he touched his step-daughter A.R. Twenty-one days before his trial on the charges Miguel's trial attorney filed the defense witness list, which included witnesses who could attest to statements by A.R. indicating that she disliked Miguel and wanted him out of her and her mother's life. Without any effort to contact any of the witnesses on the list - all of whom lived together - the State moved to have all of them excluded for late-disclosure. Miguel's attorney explained that the witnesses provided necessary testimony related to the complaining witness's bias and motive to fabricate and that excluding all of Miguel's

witnesses would deny him a fair trial and his right to effective assistance of counsel. Defense counsel asked the court to consider less severe sanctions, such as a continuance or appointing counsel. Without discussing any possible alternatives or considering the impact on Miguel's constitutional rights, the district court excluded all of his witnesses. The state's only witnesses at Miguel's trial were A.R. and Detective Naylor as the state, which had listed her as a potential witness and subpoenaed her for trial, did not wish to call Natalie (complainant's mother). Defense counsel indicated he might call her as a witness, though he did not ultimately do so.

In her testimony at trial, A.R. said Miguel came home from work and then went to bed. In the morning, he came out of the bedroom, while Natalie was still asleep, and that was when the touching happened. A.R. said that after she told her mom, Miguel

Came home, her mom confronted him, and A.R. locked herself in the bathroom while Miguel yelled at A.R. that he had told her not to tell anyone. The State asked A.R. if she was making up the allegations (opening up the door to present evidence to prove fabrication) because she wanted to get Miguel in trouble or out of the house, which A.R. denied.

During cross, A.R. further testified that she did not have any problems with Miguel or with him disciplining her. Defense counsel did not question A.R. about the charges in her story, but did ask A.R. if she could give any indication as to when the events happened. A.R. could not recall when the alleged touching happened except that it was before she moved in with her grandmother.

During Detective Maylor's testimony, the bulk of Miguel's interview was played for the jury. Also, though the State had never indicated that Det. Maylor was an expert or would offer

expert testimony about delayed disclosure, because Naylor had handled more than ten child sex cases, the State questioned him about whether delayed disclosure was common and why people delayed disclosing sexual abuse. Defense counsel did not object.

After the state rested, defense counsel moved for a directed verdict, arguing that the State had not presented evidence showing that the alleged touching happened during the charging period. After the motion was denied, defense counsel chose not to call Natalie, but Miguel testified in his own defense.

Miguel denied the allegations at trial. He explained that he had only admitted to the allegations during the interrogation because Naylor made it seem like he would help Miguel out if he admitted and because Naylor made it sound like the allegations were not such a big deal.

In closing arguments, the State highlighted Naylor's testimony that it was

not uncommon for people to delay reporting sexual abuse because of shame, threats, or other reasons. The state pointed out that when she did finally disclose, not even her own mother had believed her and she had locked herself in the bathroom while Miguel yelled at her for telling.

Dakase counsel, in turn, argued that it might be easy to assume that children do not make up these kind of allegations, but that she was living with a grandmother who did not like Miguel. The state objected that there was no evidence in the record supporting the assertion and the court agreed.

Trill counsel noted that it was not a stretch to assume the grandmother did not get along with Miguel and then argued that the state had not presented evidence showing the allegations happened or that they happened during the charging period.

The jury found Miguel guilty.

At Miguel's sentencing, three of the

people listed on Miguel's witness list - Miguel Jimenez, Sr., Fidencio Alonso Romero, and Maria Alicia Jimenez - spoke at his sentencing hearing. Two of them touched upon information related to A.R.'s credibility. Alicia, for instance, stated that she did not believe Miguel had touched A.R. She said that children sometimes lie and had seen it happen where a child is momentarily angry and says "I hate you, you're not my dad." She said she believed A.R. had lied because she ~~hated~~ (hated) Miguel at the moment she made the allegations and that it turned into a very serious matter as a result.

Fidencio also expressed his belief that the allegations had been fabricated. He said he grew up with Miguel and had worked as a corrections officer with him. He pointed out that, since being moved to her grandmother's house, A.R. was sending texts to her mom saying she wanted to come home. He believed that A.R. accused Miguel falsely because she was upset with

Miguel. He mentioned that one of A.R.'s friends had made similar allegations against her father, but came clean and said that she was making it up and had heard from "a friend" that all she had to do to get out of trouble was to say she had been touched.

The court sentenced Miguel to fifteen years of incarceration, suspending six, leaving him with a nine-year sentence.

On direct appeal Petitioner argued that:

- (1) Trial counsel was ineffective due to the court's ruling and his own failure to call Natalie at trial, impeach A.R. with prior inconsistent testimony from the preliminary hearing, and object to prejudicial delayed disclosure testimony by Det. Meylor.
- (2) Trial counsel's failures were prejudicial as there is a reasonable probab-

ility the jury would have acquitted Miguel of the charge had he been able to impeach A.R.'s testimony with evidence of bias and motive to fabricate, inconsistencies in her claims, and testimony from the mother contradicting A.R.'s version of events and casting doubt on the allegations based on the circumstances under which they arose.

(3) cumulative error.

CONCLUSION

Miguel had a viable defense to the charges against him. He was not A.R.'s father and A.R. did not like being disciplined, especially by him. In fact, eyewitnesses had heard her say she disliked Miguel and wanted him out of her and her mother's life. While grounded, A.R. told her mother Miguel had touched her, though when her mother asked her to tell the truth she said she had not meant to say it. Later, A.R. told her friend's mother after her friend's

mother had questioned A.R. about why she had misbehaved later, one of A.R.'s friends made similar accusations against her father, but recanted explaining that she had been told by a friend to make the accusations to get out of trouble. Unfortunately, because of errors by the district court and trial counsel, the jury did not hear any of this evidence. Instead, the jury only heard A.R.'s unimpeached testimony bolstered by Naylor assuring the jury that the circumstances under which A.R. disclosed were common in cases like this. Finally, an evidentiary hearing is appropriate to allow Petitioner to fully and fairly develop his claims due to the fact that the state, successfully, stonewalled any effort to resolve the claims through an evidentiary hearing and, by doing so, also, expressly waived any challenges to this Court conducting an evidentiary hearing.

Respectfully Submitted,

Dated: 07/29/21

Miguel Vincer

Miguel Jimenez
Petitioner

I, Miguel Vimeñez, am an inmate confined in an institution. Today, July 1, 2021, I am depositing this Petition in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §1746; 18 U.S.C. §3621)

Miguel Jimenez
Signed on July 29, 2021

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021 I served, via mail, Warden Sebastien at LCCF, 6900 W. Miller Dr., Hobbs, NM 88244 and the A.G., Hector Balderras, at 408 Tralisteo St., Santa Fe, NM 87504

Miguel J

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MITCHELL A. ELLERS
CLERK OF COURT
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